



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 17 2010

Carl Giudici

Reno, NV 89523

RE: MUR 6295
Carl Giudici

Dear Mr. Giudici:

On May 26, 2010, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, the Commission, on December 14, 2010, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

If you have any questions, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Susan L. Lebeaux
Acting Deputy Associate General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Carl Giudici

MUR: 6295

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Samuel Lieberman, Chairman of the Nevada State Democratic Party. The complainant alleges that Carl Giudici made an excessive contribution to Sue Lowden and Sue Lowden for US Senate and Bob Beers, in his official capacity as treasurer, ("Committee") by providing what complainant described as a "luxury recreational bus" ("recreational vehicle") for campaign use, which the Committee accepted and failed to accurately report. While Mr. Giudici did not respond to the complaint, the Committee responds that Giudici and the Committee entered into a lease agreement for the recreational vehicle in January 2010 that provides that the Committee, as lessee, will not acquire any legal or equitable interest in the recreational vehicle, but has the right to use and operate the vehicle at a rate of \$95 per day during the terms of the lease. The Committee also states that a rental rate of \$95 per day is the fair market value for a vehicle of similar year, model and condition to the vehicle being leased. Based on the available information and in furtherance of the Commission's priorities and resources relative to other pending matters, the Commission exercises its prosecutorial discretion and dismisses the allegation that Carl Giudici made an excessive contribution to the Committee. *See Heckler v. Chaney*, 470 U.S. 821 (1985). The Commission also closes the file.

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II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

The complaint and supplemental complaint ("complaint") allege that Sue Lowden and the Committee accepted an excessive contribution from Carl Giudici by failing to report the full value of the Committee's use of a recreational vehicle leased from Giudici. Specifically, the complaint, citing an attached newspaper article in the *Las Vegas Sun*, alleges that the Committee promoted the Lowden campaign by touring the state in the recreational vehicle and, at a cost of \$6,800, affixed the campaign logo on the vehicle along with a picture of Sue Lowden and other campaign graphics.¹ According to the newspaper article, Giudici bought the tan 2001 Monaco in May 2009, and a few months later, the Committee began using the vehicle. The article also reports that the Committee's attorney initially stated that the Committee did not pay Giudici on the days when Lowden was not using the bus to tour the state, but the campaign reportedly later retracted this assertion. The complaint alleges that based on the news article, the arrangement between the Committee and Giudici is unclear, because originally, Sue Lowden reportedly said a supporter had donated the vehicle to her, but later reportedly stated that Giudici owned the vehicle and was leasing it to the Committee. According to the news article, records of the Nevada Department of Motor Vehicles ("Nevada DMV") list Lowden as a title-owner of the vehicle, and the campaign's attorney reportedly stated that Sue Lowden was listed on the vehicle registration for insurance purposes. The complaint, citing a May 20, 2010 Associated Press report, alleges that Lowden also reportedly stated that she was on the vehicle title for registration purposes, but that the Nevada DMV reportedly maintains that a person cannot be listed on a

¹ See J. Patrick Collican, *Danny Tarkaninan: Sue Lowden Breaking Campaign Law By Accepting donating RV*, LAS VEGAS SUN, May 17, 2010.

Nevada vehicle title without being considered its owner and it does not recognize private leases to determine legal ownership. *See*

<http://www.nevadaappeal.com/apps/pbcs.dll/article?AID=/20100520/NEWS/100519450/1070&Parentprofile=1058&template=printart>. The complaint alleges that regardless of how the

transaction is structured, the Committee has not reported the full value of its use of the recreational vehicle. According to the complaint, the market rental rate for the vehicle in question could be as high as \$4,500 per week, but that the Committee reported in-kind contributions of only \$2,200 from Carl Giudici and \$1,885 from Elsie Giudici to use the vehicle in November 2009. The complainant alleges renting the vehicle below the fair market value results in the Committee accepting an excessive contribution from Giudici.

In response, Sue Lowden and the Committee state that Giudici did not donate the recreational vehicle to the Committee, and Ms. Lowden should have described the pre-lease transactions as in-kind contributions instead of a donation. According to the response, Carl and Elsie Giudici offered the Committee the use of their 2001 Monaco Executive Motor Home for campaign purposes, and on January 12, 2010, Carl Giudici and the Committee entered into a lease agreement, which is attached to the Committee's response. The Committee points out that the lease agreement provides that the Committee, as lessee, will not acquire any legal or home lease equitable interest in the recreational vehicle, but will have the right to use and operate the vehicle at a rate of \$95 per day during the ten-month term of the lease.

Sue Lowden and the Committee cite to an article in the *Las Vegas Review Journal*, attached to their response, reporting that its survey of Las Vegas rental rates for similar new luxury vehicles determined that the rental rate for new vehicles ranges from fifty dollars per day in winter to several hundred dollars per day in summer high season. Given that the recreational

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vehicle leased by the Committee was ten years old and in need of improvements, the response contends that the \$95 rental rate per day is well within the fair market value range. The response further states that the Committee made needed capital improvements to the recreational vehicle in February 2010 totaling \$11,082, inuring to the benefit of the owner, and, as agreed to with Giudici, reported those improvements on the Committee's April 2010 Quarterly Report as in-kind lease payments. At a rate of \$95 per day, the capital improvements totaling \$11,082 would represent 116 days ($\$11,082/\$95 = 116.65$), or approximately four months' rent. The response acknowledges that before executing the lease agreement, Giudici allowed the Committee to use the recreational vehicle, which the Committee reported as in-kind contributions of \$2,200 from Carl Giudici and \$1,885 from Elsie Giudici on its 2009 Year-End Report.² On January 28, 2010, the Committee also paid the registration fee of \$1,664 for the vehicle to the Nevada DMV.³

In addition, although contending the issues concerning whether the Nevada DMV properly registered the recreational vehicle are beyond the jurisdiction and authority of the Federal Election Commission, the response states that the Nevada DMV accepted the private lease agreement between Giudici and the Committee to register and title the recreational vehicle. However, because of the controversy whether the Nevada DMV should have allowed a vehicle's lessee to be listed as an owner, Giudici sold the recreational vehicle to Lee Brothers RV Leasing on May 20, 2010. The Committee then entered into a lease agreement with Lee Brothers on

² The disclosure reports also indicate that Carl Giudici made a cash contribution of \$200 to the Committee on August 24, 2009, and Elsie Giudici made an in-kind contribution of \$475 for vehicle rental to the Committee on January 26, 2010. The disclosure reports that include in-kind contributions for the vehicle rental do not provide information on how the Committee determined the rental rate of \$95 per day, nor do they indicate if the \$475 contribution was for one day or multiple days' use of the vehicle.

³ Although not referenced in the response, the Committee's 2010 Pre-Primary Report discloses that the Committee also paid \$3,393.39 for "RV repairs" on April 11, 2010.

May 28, 2010, and paid that firm \$2,036 on May 24, 2010.⁴ The response concludes that because it had a legitimate lease agreement with Giudici and paid fair market value to rent the vehicle, the Commission should dismiss this matter.

B. Legal Analysis

No person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office, which in the aggregate, exceed \$2,400. 2 U.S.C. § 441a(a). The contribution limit of \$2,400 was in effect for the 2010 election cycle. A contribution is defined to include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A). The term, "anything of value" includes in-kind contributions, and, unless specifically exempted, the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a contribution. 11 C.F.R. § 100.52(d)(1). The usual and normal charge for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution, and the usual and normal charge for services is the hourly or piecework charge for the services at a commercially reasonable rate at the time the services were rendered. 11 C.F.R. § 100.52(d)(2).

While it is not clear how the Committee determined the rental rate of \$95 per day, the *Las Vegas Review Journal* article, attached to the Committee's response, reported that its survey of several Las Vegas rental companies showed that a new luxury recreational vehicle, of the same make and model to the vehicle leased by the Committee, would range from a low of \$50 a day in

⁴ While the Committee did not submit a copy of its lease with Lee Brothers, the payment of \$2,036 at the rental rate of \$95 per day would cover 21 days ($\$2,036/\$95 = 21.43$), which would extend beyond the June 8, 2010 primary election, which Lowden lost.

winter and up to several hundred dollars a day in the summer high season. Several Internet websites that appear to specialize in renting new, or relatively new, recreational vehicles indicate that rental rates for such recreational vehicles in Las Vegas are several hundred dollars per day.

The recreational vehicle the Committee leased was, during the time-period alleged in the complaint, owned by private individuals, approximately ten years old, had a ten-month lease, and needed substantial capital improvements, which the Committee made and apparently set off against amounts it owed the lessor, and which inured to the owner of the vehicle. These factors may warrant a discount to the rental rate charged for short-term rentals of presumably new, or newer vehicles in relatively good repair. For these reasons and in furtherance of the Commission's priorities and resources relative to other pending matters, the Commission exercises its prosecutorial discretion and dismisses the allegation that Carl Giudici made an excessive contribution to Sue Lowden or Sue Lowden for US Senate and Bob Beers, in his official capacity as treasurer, in violation of 2 U.S.C. § 441a(a)(1)(a). *See Heckler v. Chaney*, 470 U.S. 821 (1985). The Commission also closes the file.

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